

Add Section 163.1
Title 14, California Code of Regulations
Re: Herring Permit Transfer Fee

- 1

required that a transfer fee be paid to the state.

Anecdotal information from fishermen as well as trends for the number of permit transfers, number of permits reverting to the state, and the number of partnerships indicate that the current transfer fee of \$5,000 is a barrier to the sale and transfer of herring permits. The number of transfers per year dropped markedly after the transfer fee increased from \$2,500 to \$5,000 on April 1, 1997 (Attachment 1). The number of permits reverting to the state has increased dramatically in the last two seasons (Attachment 1); a permit reverts to the state when the permit was not sold and transferred after the death of a permit holder or when the permit holder choose not to renew the permit.

Herring permit transfer procedures are specified in statute (Fish and Game Code Sections 8552.2 and 8552.6). The administrative and fiscal impacts to the Department for completing a transfer are minor. The reduction in the fee will not impact the Department's ability to complete permit transfers.

Existing law (Fish and Game Code Section 8552.7) states that the transfer fees shall be used for research and management of herring. On average, the revenues from the transfer fee represent about 4 to 5 percent of the revenue that the Department receives directly from the herring fishery and about 7 percent of the revenue deposited in the Herring Dedicated Account for herring management and research. If the number of permit transfers per year stays the same as the average number per year since the transfer fee was increased to \$5,000 on April 1, 1997 (*i.e.*, about 4 per year), then the Department would lose revenues. However, if the number of permit transfers per year equals the average number of transfers when the fee was less than \$5,000 (*i.e.*, 32 per year), then the Department would not lose revenues. Any revenues lost due to the lower transfer fee would need to be absorbed by the Department within existing budgets and resources, or the Department would need to find ways to reduce the cost of managing the herring fisheries.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 8552.1 and 8553, Fish and Game Code.

Reference: Sections 8552.1 and 8552.7, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None.

- (d) Identification of Reports or Documents Supporting Regulation Change: None.

- (e) Public Discussions of Proposed Regulations Prior to Notice publication:

Discussions about reducing the herring permit transfer fee occurred at the following meetings:

- Director's Herring Advisory Committee meetings on March 25, 2004, November 17, 2004, and April 5, 2005
- Herring Town Hall Meeting in Sausalito on January 25, 2005
- Herring Public Meeting in Bodega Bay on April 12, 2005
- Herring Public Meeting in Sausalito on April 12, 2005

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: The Department considered herring permit transfer fees of \$500. The Department would not be able to absorb the lost revenue from a fee as low as \$500 which is one-tenth the current fee.

- (b) No Change Alternative: If the herring permit transfer fee remains at \$5,000, it is expected that the number of transfers will remain low, and the number of permits reverting to the state will continue to rise.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

None. No adverse economic impacts are anticipated from the proposed regulations. The proposed regulation, at most, would facilitate the sale and transfer of herring permits by fishermen desiring to leave the fishery through reduced transactions costs. There are currently 417 herring permit holders. Anecdotal information from the fishermen, and some statistical corroboration at the Department of Fish and Game, indicate that the current transfer fee of \$5,000 may present a barrier to the sale and transfer of herring permits.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None. Lowering the transfer fee cost would reduce transactions costs and likely enable some fishermen to retire while capturing a larger portion of the current value of their permit. This would facilitate the perpetual use of permits for ongoing business activities and opportunities, thus preserving or perhaps increasing the number of jobs in the State. This would be in contrast to a permit holder retiring or dying and letting the permit lapse due to a relatively high permit transfer fee of \$5,000.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any adverse cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Since April 1, 1997 when the transfer fee rose to \$5,000, there have been an average of four permit transfers per year; generating about \$20,000 (4 x \$5,000) in transfer fees to the Department. Industry representatives have stated that more fishermen would retire and sell their permits, if transfer fees were lower. Department records on herring permit transfers over the last 17 years appear to confirm that a \$5,000 transfer fee is a barrier to fishermen selling and transferring their permits. The average age of resident herring

fishermen rose from 50 years of age in 1996, to 58 years of age in 2004. This suggests that fishermen are keeping their permits longer, and are disinclined to sell them. Based on advertisements in recent commercial fishing trade journals, the current price for a San Francisco Bay herring permit is less than \$10,000. Thus, a \$5,000 transfer fee is at least 50 percent of the revenues generated from sale of a permit at current market prices. This likely deters older fishermen from retiring and selling their herring permits. The average age of herring permit holders at death or retirement was 73.5 years of age from 1996 through 2004. The age composition of herring permit holders in 2004 is as follows: 0.9 percent are age 18-30, 8.0 are percent age 30-40, 22.2 percent are age 40-50, 40.1 percent are age 50-60, 16.5 percent are age 60-70, 8.5 percent are age 70-80, and 3.8 percent are age 80 or older. Based on this current age composition of the 417 herring fishermen, there are 22 individuals at or above the threshold age (that is, average age at death or retirement) of 73.5 years. The Department anticipates that these 22 permit holders are likely to transfer their permits soon after implementation of a transfer fee reduction. Thus, in the first couple years of a new \$1,000 transfer fee, there may be 10 to 15 transfers a year, representing \$10,000 to \$15,000 in Department revenues in each year. Thereafter, the Department expects the annual number of transfers to average about 2.2 over the next five years, and about 2.8 over the next 10 years, based on the 2004 age structure of the herring permit holders and assuming a retirement threshold age of 73.5 years. However, permit sale and transfer activity is dependent on, among other things, the availability of qualified and willing buyers.

Compared to historical permit transfers, which average four transfers per year, under the reduced transfer fee the Department would likely lose revenues of up to -\$9,000 per year in the first couple of years. This revenue loss would occur even with anticipated increases in the number of transfers to about 11 in year one and year two of the proposed regulations. If the number of transfers thereafter average 2.8 a year, annual losses in transfer revenues would be approximately -\$17,200 for the Department. This assumes that all other factors potentially affecting permit transfer activity stay the same (e.g., ex-vessel value of the product, Japanese economy, foreign exchange rates, out-of-state competition, and existing inventories). Japan imports nearly all of the herring roe from fisheries in California. Current indications are that the Japanese economy is not likely to rebound dramatically in the next few years.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Informative Digest/Policy Statement Overview

Under existing law (Fish and Game Code Sections 8550 and 8552), Pacific herring may be taken for commercial purposes only under the authority of a permit, and the permits are transferable under the provisions of Fish and Game Code Sections 8552.2, 8552.6, and 8552.7. Fish and Game Code Section 8552.7 currently sets the fee to transfer a herring permit at \$5,000. Under existing law (Fish and Game Code Section 8552.1), the Commission, may adjust the herring permit transfer fee to a level that will not discourage the transfer of permits or limit entry into the fishery, and that will ensure sufficient funds to cover reasonable Department costs associated with management of the fishery.

The proposed regulations would lower the herring permit transfer fee from \$5,000 to \$1,000. The current fee of \$5,000 is inhibiting transfer of permits, and is creating an economic hardship for permit holders who want to leave the fishery and for fishermen who want to enter the fishery. Many permit holders consider the \$5,000 fee excessive and inequitable during a period when the market value of the permits is relatively low. Lowering the permit fee to \$1,000 would lower the economic barrier for permit transfers while still providing the Department with revenue for herring research and management.

Attachment 1
Initial Statement of Reasons for Regulatory Action
Add Section 163.1, Title 14, CCR
May 13, 2005

Permit transfer fee, number of permit transfers, number of permits reverting to the State, and average base price for herring in the Pacific herring roe fisheries in California by season.

Season (April 1- March 31)	Permit Transfer Fee	Number of Transfers	Number of Permits Reverting to the State	Average Base Price for Roe Herring in California (per ton)
1988-1989	\$1,000	0	0	\$1,250
1989-1990	\$1,000	34	Not Available	\$1,200
1990-1991	\$1,000	36	Not Available	\$900
1991-1992	\$1,000 before Jan 1, 1992, then \$5,000	10	Not Available	\$1,200
1992-1993	\$1,000	2	0	\$500
1993-1994	Tomales \$1,000; other areas* \$5,000	2	1	\$600
1994-1995	Tomales \$1,000; other areas* \$2,500 until Sep 12, 1994, then \$5,000	22 (Tomales 8; Other 14)	0	\$1,400
1995-1996	Tomales \$1,000; other areas* \$2,500	35 (Tomales 1; Other 34)	0	\$2,300
1996-1997	Tomales \$1,000; other areas* \$2,500	45 (Tomales 3; Other 42)	0	\$1,000
1997-1998	\$5,000	3	0	\$400
1998-1999	\$5,000	4	0	\$625
1999-2000	\$5,000	6	3	\$800
2000-2001	\$5,000	4	5	\$700
2001-2002	\$5,000	7	4	\$500
2002-2003	\$5,000	4	4	\$500
2003-2004	\$5,000	5	17	\$500
2004-2005	\$5,000	2	11	\$500

* Other areas include San Francisco Bay, Humboldt Bay, and Crescent City Harbor